

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-7530

GEORGE RANDOLPH SUTTON, JR.,

Plaintiff - Appellant,

versus

L.T.J. MEMMELAAR, SBI Drug Officer; MIKE K.
HORSTMAN, GPD/SBI Drug Officer; BRUCE HULSE,
JR., Esquire; BUDDY MOZINGO, IRS State
Official; C. B. VICKORY, District Attorney;
TERRY LIGHT, Assistant District Attorney,

Defendants - Appellees.

Appeal from the United States District Court for the Eastern
District of North Carolina, at Raleigh. Malcolm J. Howard,
District Judge. (CA-04-405-5-CT-H)

Submitted: February 18, 2005

Decided: March 16, 2005

Before WILLIAMS, GREGORY, and SHEDD, Circuit Judges.

Affirmed by unpublished per curiam opinion.

George Randolph Sutton, Jr., Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

George R. Sutton appeals the district court's orders dismissing his 42 U.S.C. § 1983 (2000) action as frivolous and denying his motion for reconsideration.* Sutton raises several issues on appeal: (1) his due process rights were violated; (2) the prosecutors violated Brady v. Maryland, 373 U.S. 83 (1963), by not disclosing evidence; (3) unlawful search and seizure; (4) he is entitled to amend his complaint; and (5) he would like the court to strike all pleadings and motions filed with and after the original complaint.

First, we note that this court generally will not consider issues raised for the first time on appeal. See Muth v. United States, 1 F.3d 246, 250 (4th Cir. 1993). Therefore, we will not consider claims (4) and (5) as Sutton did not assert those issues in the district court.

*Sutton's notice of appeal designated only the district court's August 19, 2004 order as the order from which he was appealing. However, Sutton also filed a motion for reconsideration that was denied on September 29, 2004, after he filed his notice of appeal. (R. 15). That motion effectively tolled the thirty-day period within which he had to note his appeal. Fed. R. App. P. 4(a)(4)(A). Sutton's informal brief, which was filed within thirty days of the September 29, 2004 order, included arguments raised in his motion for reconsideration. This court construes Sutton's informal brief as an amended notice of appeal to include a timely appeal from the district court's September 29, 2004 opinion. Smith v. Barry, 502 U.S. 244, 245 (1992) (holding that document filed within appeal period and containing information required by Fed. R. App. P. 3(c) is functional equivalent of notice of appeal).

As to claims (1), (2), and (3), which Sutton did raise in the district court, we have reviewed the record and the district court's opinions and find no reversible error. Accordingly, we affirm the dismissal of those claims on the reasoning of the district court. See Sutton v. Memmelaar, No. CA-04-405-5-CT-H (E.D.N.C. filed Aug. 18, 2004, entered Aug. 19, 2004; and entered Sept. 29, 2004). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED